

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 78428

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at <http://www.idwr.idaho.gov/>.

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

Yes N/A * Means the item is always required and must be included with the application.

- ☒ * Completed Application for Transfer of Water Right form, Part 1.
- ☒ * Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ * Application for Transfer Part 2A. Attach a Part 2A report describing each water right in the transfer as currently recorded.
- ☐ ☒ Complete and attach an Application for Transfer Part 2B for each water right for which only a portion is proposed to be changed through this transfer application.
- ☒ * Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- ☒ * Correct fee submitted with transfer application form. (Fee schedule is on website and instructions for application for transfer.)

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-9.

- ☐ ☒ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☐ ☒ #2a Water Right ownership documentation if Dept. records do not show the transfer applicant as the current water right owner. Additional fee(s) required for water right ownership changes; see fee schedule.
- ☐ ☒ #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Additional fee(s) required for water right ownership changes; see fee schedule.
- ☐ ☒ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☐ ☒ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☐ ☒ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at <http://www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm>.
- ☐ ☒ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☐ ☒ #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use.
- ☐ ☒ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) Additional fee required for proposed changes to nature of use; see fee schedule.
- ☐ ☒ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☒ ☐ #9 Other. Please describe: Attachment A (narrative); Attachment B (Amended Order re Transfers 66132 and 66133)

SUPPORT DATA
IN FILE # 2-103

RECEIVED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 78428FEB 11 2013 APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1WATER RESOURCES
WESTERN REGION
Name of Applicant(s) BLACK MESA FARMS LLCPhone (208) 599-3131Mailing address PO BOX 82, GLENNS FERRY, ID 83623Email mpl@givenspursley.com (atty)

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☐ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No RepresentativeName of Representative Michael P. Lawrence (attorney)Phone (208) 388-1294Mailing address 601 W. Bannock St., PO Box 2720, Boise, ID 83701Email mpl@givenspursley.com

- ☐ Send all correspondence for this application to the representative and not to the applicant.
- OR
- ☒ Send original correspondence to the applicant and copies to the representative.
- ☒ The representative may submit information for the applicant but is not authorized to sign for the applicant.
- OR
- ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Don J. Bryant
Signature of Applicant or Authorized Representative

Don J. Bryant Partner 2/1/13
Print Name and Title if applicable Date

Wesley R. Wooten
Signature of Applicant or Authorized Representative

Wesley R. Wooten 2/4/2013
Print Name and Title if applicable Date

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☒ Other authorize Field Prep Irrigation of acres in PPU
2. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2**. Applicant requests authorization for "Field Prep Irrigation" within its existing permissible place of use. See Attachment A for more details.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part					
☒ ☐	2-103	3.96 cfs	Irrigation	3/15 to 11/15	Snake R., trib. to Columbia R.
☒ ☐	2-2209B	12.8 cfs	Irrigation	4/1 to 10/31	Snake R., trib. to Columbia R.
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 16.76 cfs cfs and/or _____ ac-ft

2. Total amount of water proposed to be transferred or changed 16.76 cfs cubic feet per second and/or _____ acre-feet per annum.

3. Point(s) of Diversion:

- ☒ No changes to point(s) of diversion are proposed-the following chart is therefore not completed. (Proceed to #4.)
- ☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it **Attachment #5**.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☒ No changes to place of use are proposed-the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres (for irrigation use) _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued**

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future: _____

Four 600 HP high-lift irrigation pumps at Snake River divert water and pressurize system; 42-inch pipe delivers water from river pumps to place of use on top of canyon rim; 18-inch & 15-inch underground mainlines and 12-inch portable surface lines distribute water around place of use.

- b. Who owns the property at the point(s) of diversion? Canyon Bend Ranch Ltd.; Gregg Falcone

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:
Easement and right-of-way established under Idaho law

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?

If yes, ☐ Attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: n/a

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

- d. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:

n/a

- e. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:

n/a

- f. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- ☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☒ currently leased to the Water Supply Bank,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right, or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the rights?

If yes, describe: _____

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 2-103

Current Owner: CHRISTINE W WOOTAN
BLACK MESA FARMS LLC
WESLEY R WOOTAN
DON J BRYANT
BRENDA BRYANT

Priority Date: 5/10/1965

Origin: Water Right

Status: Active

Basis: Decreed

Source

SNAKE RIVER

Tributary

COLUMBIA RIVER

Beneficial Use

IRRIGATION

From To

03/15 to 11/15

Total Diversion

Diversion Rate

3.96 CFS

3.96 CFS

Annual Volume

Location of Point(s) of Diversion

SNAKE RIVER

ELMORE County

L6(NW1/4SW1/4)

Sec. 9, Twp 06S, Rge 11E B.M.

Place of Use

IRRIGATION Within ELMORE County

T06S R10E S1	NESW	35.00	T06S R10E S1	SWSW	39.00
T06S R10E S1	SESW	40.00	T06S R10E S1	NWSE	30.00
T06S R10E S1	SWSE	40.00	T06S R10E S1	SESE	30.00
T06S R10E S2	SESE	39.00	T06S R10E S11	NENE	40.00
T06S R10E S11	SWNE	40.00	T06S R10E S11	SENE	39.00
T06S R10E S11	NESW	40.00	T06S R10E S11	NWSW	40.00
T06S R10E S11	SWSW	40.00	T06S R10E S11	SESW	40.00
T06S R10E S11	NESE	39.00	T06S R10E S11	NWSE	40.00
T06S R10E S11	SWSE	40.00	T06S R10E S11	SESE	40.00
T06S R10E S12	NENE	40.00	T06S R10E S12	NWNE	40.00
T06S R10E S12	SWNE	40.00	T06S R10E S12	SENE	40.00
T06S R10E S12	NENW	40.00	T06S R10E S12	NWNW	39.00
T06S R10E S12	SWNW	39.00	T06S R10E S12	SENW	40.00
T06S R10E S12	NESW	40.00	T06S R10E S12	NWSW	39.00
T06S R10E S12	SWSW	38.00	T06S R10E S12	SESW	21.00
T06S R10E S12	NESE	40.00	T06S R10E S12	NWSE	40.00
T06S R10E S12	SWSE	39.00	T06S R10E S12	SESE	39.00
T06S R10E S13	NENE	39.00	T06S R10E S13	NWNE	39.00
T06S R10E S13	SWNE	40.00	T06S R10E S13	SENE	40.00

T06S R10E S13		NENW	39.00	T06S R10E S13		NWNW	39.00
T06S R10E S13		SWNW	40.00	T06S R10E S13		SESW	40.00
T06S R10E S13		NESW	40.00	T06S R10E S13		NWSW	40.00
T06S R10E S13		NESE	40.00	T06S R10E S13		NWSE	40.00
T06S R10E S13		SWSE	40.00	T06S R10E S13		SESE	40.00
T06S R10E S14		NENE	40.00	T06S R10E S14		NWNE	40.00
T06S R10E S14		SWNE	40.00	T06S R10E S14		SENE	40.00
T06S R10E S14		NENW	40.00	T06S R10E S14		NWNW	40.00
T06S R10E S14		SWNW	40.00	T06S R10E S14		SESW	40.00
T06S R10E S14		NESW	39.00	T06S R10E S14		NESE	39.00
T06S R10E S14		NWSE	30.00	T06S R10E S24		NENE	40.00
T06S R10E S24		NWNE	39.00	T06S R10E S24		SWNE	40.00
T06S R10E S24		SENE	40.00	T06S R10E S24		NESE	40.00
T06S R10E S24		NWSE	40.00	T06S R11E S6	Lot 7	SWSW	10.00
T06S R11E S7		NENE	25.00	T06S R11E S7		NWNE	25.00
T06S R11E S7		SWNE	40.00	T06S R11E S7		SENE	40.00
T06S R11E S7		NENW	30.00	T06S R11E S7	Lot 1	NWNW	37.00
T06S R11E S7	Lot 2	SWNW	37.00	T06S R11E S7		SESW	40.00
T06S R11E S7		NESW	40.00	T06S R11E S7	Lot 3	NWSW	38.00
T06S R11E S7	Lot 4	SWSW	37.00	T06S R11E S7		SESW	39.00
T06S R11E S7		NESE	40.00	T06S R11E S7		NWSE	40.00
T06S R11E S7		SWSE	39.00	T06S R11E S7		SESE	40.00
T06S R11E S17		NWNW	40.00	T06S R11E S17		SWNW	40.00
T06S R11E S17		NWSW	40.00	T06S R11E S18		NENE	38.00
T06S R11E S18		NWNE	39.00	T06S R11E S18		SWNE	40.00
T06S R11E S18		SENE	39.00	T06S R11E S18		NENW	39.00
T06S R11E S18	Lot 1	NWNW	37.00	T06S R11E S18	Lot 2	SWNW	38.00
T06S R11E S18		SESW	40.00	T06S R11E S18		NESW	40.00
T06S R11E S18	Lot 3	NWSW	38.00	T06S R11E S18	Lot 4	SWSW	38.00
T06S R11E S18		SESW	40.00	T06S R11E S18		NESE	40.00
T06S R11E S18		NWSE	40.00	T06S R11E S18		SWSE	40.00
T06S R11E S19	Lot 1	NWNW	39.00	T06S R11E S19	Lot 2	SWNW	39.00
T06S R11E S19	Lot 3	NWSW	39.00				

Total Acres: 3948

Conditions of Approval:

1. K06 This right is limited to the irrigation of 198 acres within the place of use described above in a single irrigation season.
2. Other water rights have been decreed with a place of use within portions of the decreed place of use for this water right and water right 2-2209B. However, only water right nos. 2-103 and 2-2209B are currently beneficially used on the decreed place of use for this right and water right 2-2209B. No transfer or other administrative or judicial action affecting the place of use of any other water right shall affect the right to the use of water under this water right or water right no. 2-2209B at the above described place of use.
3. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

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Decreed Date: 4/25/2012

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 2-2209B

Current Owner: BLACK MESA FARMS LLC
BRENDA BRYANT
WESLEY R WOOTAN
DON J BRYANT
CHRISTINE W WOOTAN

Priority Date: 2/25/1963

Origin: Water Right

Status: Active

Basis: Decreed

Source

SNAKE RIVER

Tributary

COLUMBIA RIVER

Beneficial Use

IRRIGATION

From To

04/01 to 10/31

Total Diversion

Diversion Rate

12.8 CFS

12.8 CFS

Annual Volume

2142 AF

2142 AF

Location of Point(s) of Diversion

SNAKE RIVER

ELMORE County

L6(NW1/4SW1/4)

Sec. 9, Twp 06S, Rge 11E B.M.

Place of Use

IRRIGATION Within ELMORE County

T06S R10E S1	NESW	35.00	T06S R10E S1	SWSW	39.00
T06S R10E S1	SESW	40.00	T06S R10E S1	NWSE	30.00
T06S R10E S1	SWSE	40.00	T06S R10E S1	SESE	30.00
T06S R10E S2	SESE	39.00	T06S R10E S11	NENE	40.00
T06S R10E S11	SWNE	40.00	T06S R10E S11	SENE	39.00
T06S R10E S11	NESW	40.00	T06S R10E S11	NWSW	40.00
T06S R10E S11	SWSW	40.00	T06S R10E S11	SESW	40.00
T06S R10E S11	NESE	39.00	T06S R10E S11	NWSE	40.00
T06S R10E S11	SWSE	40.00	T06S R10E S11	SESE	40.00
T06S R10E S12	NENE	40.00	T06S R10E S12	NWNE	40.00
T06S R10E S12	SWNE	40.00	T06S R10E S12	SENE	40.00
T06S R10E S12	NENW	40.00	T06S R10E S12	NWNW	39.00
T06S R10E S12	SWNW	39.00	T06S R10E S12	SENE	40.00
T06S R10E S12	NESW	40.00	T06S R10E S12	NWSW	39.00
T06S R10E S12	SWSW	38.00	T06S R10E S12	SESW	21.00
T06S R10E S12	NESE	40.00	T06S R10E S12	NWSE	40.00
T06S R10E S12	SWSE	39.00	T06S R10E S12	SESE	39.00
T06S R10E S13	NENE	39.00	T06S R10E S13	NWNE	39.00
T06S R10E S13	SWNE	40.00	T06S R10E S13	SENE	40.00

T06S R10E S13		NENW	39.00	T06S R10E S13		NWNW	39.00
T06S R10E S13		SWNW	40.00	T06S R10E S13		SESW	40.00
T06S R10E S13		NESW	40.00	T06S R10E S13		NWSW	40.00
T06S R10E S13		NESE	40.00	T06S R10E S13		NWSE	40.00
T06S R10E S13		SWSE	40.00	T06S R10E S13		SESE	40.00
T06S R10E S14		NENE	40.00	T06S R10E S14		NWNE	40.00
T06S R10E S14		SWNE	40.00	T06S R10E S14		SENE	40.00
T06S R10E S14		NENW	40.00	T06S R10E S14		NWNW	40.00
T06S R10E S14		SWNW	40.00	T06S R10E S14		SESW	40.00
T06S R10E S14		NESW	39.00	T06S R10E S14		NESE	39.00
T06S R10E S14		NWSE	30.00	T06S R10E S24		NENE	40.00
T06S R10E S24		NWNE	39.00	T06S R10E S24		SWNE	40.00
T06S R10E S24		SENE	40.00	T06S R10E S24		NESE	40.00
T06S R10E S24		NWSE	40.00	T06S R11E S6	Lot 7	SWSW	10.00
T06S R11E S7		NENE	25.00	T06S R11E S7		NWNE	25.00
T06S R11E S7		SWNE	40.00	T06S R11E S7		SENE	40.00
T06S R11E S7		NENW	30.00	T06S R11E S7	Lot 1	NWNW	37.00
T06S R11E S7	Lot 2	SWNW	37.00	T06S R11E S7		SESW	40.00
T06S R11E S7		NESW	40.00	T06S R11E S7	Lot 3	NWSW	38.00
T06S R11E S7	Lot 4	SWSW	37.00	T06S R11E S7		SESW	39.00
T06S R11E S7		NESE	40.00	T06S R11E S7		NWSE	40.00
T06S R11E S7		SWSE	39.00	T06S R11E S7		SESE	40.00
T06S R11E S17		NWNW	40.00	T06S R11E S17		SWNW	40.00
T06S R11E S17		NWSW	40.00	T06S R11E S18		NENE	38.00
T06S R11E S18		NWNE	39.00	T06S R11E S18		SWNE	40.00
T06S R11E S18		SENE	39.00	T06S R11E S18		NENW	39.00
T06S R11E S18	Lot 1	NWNW	37.00	T06S R11E S18	Lot 2	SWNW	38.00
T06S R11E S18		SESW	40.00	T06S R11E S18		NESW	40.00
T06S R11E S18	Lot 3	NWSW	38.00	T06S R11E S18	Lot 4	SWSW	38.00
T06S R11E S18		SESW	40.00	T06S R11E S18		NESE	40.00
T06S R11E S18		NWSE	40.00	T06S R11E S18		SWSE	40.00
T06S R11E S19	Lot 1	NWNW	39.00	T06S R11E S19	Lot 2	SWNW	39.00
T06S R11E S19	Lot 3	NWSW	39.00				

Total Acres: 3948

Conditions of Approval:

1. S40 THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER OCTOBER 31 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
3. P21 THIS RIGHT IS A SPLIT FROM FORMER RIGHT 02-2209.
4. K06 THIS RIGHT IS LIMITED TO THE IRRIGATION OF 640 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
5. C05 Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
6. E52 USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 90.24 CFS. COMBINED RIGHT NOS.: 2-103, 2-4021, AND ALL PARTS OF BASE RIGHT 2-2209 INCLUDING 2-2209B, 2-2209C, 2-2209E, 2-10187, 2-10189, 2-10191, 2-10196, 2-10208, & 2-10209.

Decreed Date: 6/15/2009

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3**

A. PLAT MAP (See Part 3A of Instructions for application for transfer for complete requirements.)

- ☒ Attach a map of the diversion, measurement, control, and distribution system. Label it **Attachment #7a**.
- ☐ If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. Label it **Attachment #7b**. If the place of use currently consists of a permissible place of use, then the attachment is not required if the application contains a clear statement that the boundaries for the place of use are not proposed to be changed by the transfer and the total number of irrigated acres within the place of use before and after the transfer is clearly stated.

B. CHANGES IN NATURE OF USE (Water Balance)

- ☐ If you propose to change the nature of use or period of use of all or part of the rights(s) listed in this application, attach documentation describing the extent of historic beneficial use of the portion of the right(s) proposed to be changed. Also attach documentation showing that the portion of the right(s) to be changed will not be enlarged in rate, volume, or consumptive use through the proposed change. Label it **Attachment #8a**.

C. PLACE OF USE CHANGES TO SUPPLEMENTAL IRRIGATION RIGHTS

- ☐ If you propose to change the place of use of a supplemental irrigation right, answer below and attach supporting documentation. Label it **Attachment #8b**.

Describe how the supplemental water rights have been used historically in conjunction with other water rights at the existing place of use. Describe the time during the irrigation season that the supplemental rights have been used. Include information about the availability or reliability of the primary right(s) being supplemented, both before and after the change. If the applicant is proposing to change a supplemental irrigation right to a primary right, provide the information required on Part 3B above.:
n/a

FOR DEPARTMENT USE ONLY

Transfer contains 10 pages and 3 attachments.

Received by RS Date 2.11.13 Prelim. Check by kw Date 8/27/13

Fee Paid 1780.00 Date 2.11.13 Receipted by RS Receipt # W040860

Add'l Fee Paid _____ Date _____ Receipted by _____ Receipt # _____

2-2209B & 2-103

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



**Attachment A to Black Mesa Farms LLC's
Application for Water Right Transfer—right nos. 2-103 and 2-2209B**

This narrative describes the changes proposed by Black Mesa Farms LLC (the "Applicant") in its Application for Transfer of Water Right Nos. 2-103 and 2-2209B (the "Application") filed with the Idaho Department of Water Resources ("IDWR" or "Department") on February __, 2013.

The Applicant seeks to have conditions and/or remarks included in decreed water right nos. 2-103 and 2-2209B (the "Rights") that expressly authorize irrigation for purposes of preparing lands for planting and irrigation the following year ("Field Prep Irrigation"). The Field Prep Irrigation acres would be within the Rights' currently authorized permissible place of use ("PPU"), but would be in addition to acres irrigated to produce crops during an irrigation season. The Department approved a transfer authorizing a similar plan in the *Amended Preliminary Order Amending Transfer Approvals*, In the Matter of Applications for Transfer Nos. 66132 and 66133 in the Name of Heidi and Eugene Matthews (July 20, 2010) (the "Matthews Order"), a copy of which is included with the Application as Attachment B.

The Rights authorize a total of 16.76 cfs to irrigate 838 acres within a 3,948 acre PPU, as summarized in the following table:

Right No.	Diversion Rate (cfs)	Annual Volume (afy)	Irrigated Acres	PPU Acres
2-103	3.96	none listed	198	3,948
2-2209B	12.8	2,142	640	3,948
COMBINED TOTALS	16.76		838	3,948

None of these decreed elements would change under the transfer proposed in the Applications.

Under the Applicant's Field Prep Irrigation proposal, the Applicant would be authorized to irrigate up to 838 acres of crops to be harvested in a calendar year ("Crop Acres"). However, once the Applicant ceases irrigating some or all Crop Acres for a given irrigation season, the Applicant would be authorized to irrigate an equivalent number of acres within the Rights' 838 acre limit and PPU for Field Prep Irrigation. As noted in the Matthews Order, "fall irrigation of land . . . for preparation of planting of crops to be grown the following year" is a "[c]ommon agricultural practice." Here, the Applicant seeks the Department's confirmation and express authorization that such a practice is allowed under the Rights.

The proposed Field Prep Irrigation will not result in enlargement or cause injury to other water rights. The Hearing Officer in the Matthews Order, p. 5, explained that "there would be no enlargement as long as the rates and annual volumes of the water rights are not exceeded during the normal irrigation season and the number of acres are not exceeded during the September 1 to August 31 acre accounting period."

In the Matthews Order, the Hearing Officer imposed conditions to ensure that the "Irrigation Plan" did not result in enlargement. Here, the Applicant will agree to have substantively similar conditions imposed if the Application is approved.

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS) **AMENDED**
FOR TRANSFER NOS. 66132 AND 66133) **PRELIMINARY ORDER**
IN THE NAME OF HEIDI AND EUGENE) **AMENDING TRANSFER**
MATTHEWS) **APPROVALS**
_____)

HISTORY

Applications for Transfer Nos. 66132 and 66133 ("transfers") were filed by Anderson Farms in 2001 with the Idaho Department of Water Resources ("Department"). Prior to 2001, Anderson Farms claimed the water rights associated with the transfers in the Snake River Basin Adjudication ("SRBA"). These rights were recommended to the SRBA court in the Director's Report for Basin 45 in 2004. Currently all recommendations involved in these transfers are pending before the SRBA court without objection.

In 2004 Anderson Farms deeded the subject lands to Heidi and Eugene Matthews ("Matthews or Applicants"). The Matthews continue to pursue final approval of the transfers. On December 2, 2009, the Department issued preliminary orders approving Transfer Nos. 66132 and 66133 ("orders").

On December 16, 2009, the Department received petitions for reconsideration ("petitions") of the orders and a request for a hearing in these matters from Matthews. The petitions sought similar modifications to the orders. The Applicants complained that:

1. The orders failed to mention necessary provisions of the water rights as found by the Court in that Decree entered in the District Court of the Fifth Judicial District of the State of Idaho, in and for Cassia County, Civil Case No. 11125, that authorize the Applicants to divert high water flows. Historically, the Applicants have diverted and applied these high flow rights to a beneficial use, allowing the Applicants to grow crops on all 905.9 acres recognized by the Department. The Applicants requested that a provision be inserted in the orders recognizing Applicants' right to divert these high flows.
2. The orders authorized the Applicants to use the water rights on 527.2 acres per year out of a total of 905.9 acres listed as the place of use for the water right. The precise location of the 527.2 acres irrigated can vary from year to year. Applicants requested clarification that so long as the annual volumes described in the transfers are not exceeded, Applicants

can fall irrigate on that portion of the 905.9 acres not irrigated in one crop year in order to prepare that acreage for planting the following crop year.

On January 5, 2010, the Department denied the petitions for reconsideration regarding the high flows issues raised by the Applicants but granted the hearing request regarding fall pre-irrigation. The Department limited the scope of the hearing to issues related to allowing fall pre-irrigation of lands in excess of the acreage limits established under the water rights.

Prior to scheduling the hearing, the hearing officer requested a staff memorandum be prepared addressing the excess irrigation issue. On February 4, 2010, Cindy Yenter, Water Rights Supervisor with the Department and then watermaster of Water District 140, submitted a staff memorandum to the hearing officer. The memorandum was shared with the Applicants at the time the notice of hearing was mailed.

On March 25, 2010, the Department conducted a hearing with limited scope as described above. At the hearing testimony was taken from Eugene Matthews (applicant), Cindy Yenter (Department employee and past watermaster of Water District 140) and Brian Higgs (newly elected watermaster of Water District 140).

No exhibits were offered for consideration at the hearing. The hearing officer took official notice of the files for Transfer No. 66132 and Transfer No. 66133 including the February 4, 2010 staff memorandum, holdings in past decisions and orders of the Department as the holdings and orders may apply to these matters, the Department's water right records including the SRBA records for the subject water rights, and other records of the Department including water master records, water measurement records or well logs.

On June 30, 2010, the Department issued a "Preliminary Order Amending Transfer Approvals" with attached Irrigation Plan. One July 13, 2010 the Department received a petition for reconsideration of the June 30, 2010 order. The petition requested that the condition of approval limiting fall irrigation to "two applications or sets of water" be removed from the order and Irrigation Plan.

FINDINGS OF FACT

1. Transfer No. 66132 involves ground water right nos. 45-2405, 45-2406, 45-2661, 45-12928 and 45-12930. The transfer modifies the place of use creating a permissible place of use ("PPU") of 905.9 acres within which 527.2 acres may be irrigated in any one season. Recommendations 45-12928 and 45-12930 are expansion rights pursuant to Idaho Code § 42-1416B.

2. Transfer No. 66133 involves surface water rights 45-577A, 45-577B, 45-

578A, 45-578B, 45-579A, 45-579B, 45-580A, 45-580B, 45-600, 45-12927, 45-586, 45-587, 45-588, 45-12929 and 45-534, diverted within the Basin Creek area. The transfer modifies the place of use of all recommendations, except 45-534, creating a PPU of 905.9 acres within which 527.2 acres may be irrigated in any one season. Water right 45-534 is split with the portion retained by the Applicants (45-14216) being placed in the PPU. The portion of water right 45-534 retained by Robert and Carol Bedke (45-14217) is described on the Bedke property. Recommendations 45-12927 and 45-12929 are enlargement rights pursuant to Idaho Code § 42-1426.

3. The authorized PPU for Matthews' property on both transfers is the same 905.9 acres and the total authorized number of acres to be irrigated in any one season is 527.2 acres when the transfers are combined. The transfers do not modify the claimed season of use for any of the water rights.

4. The applicant and prior owners have irrigated as much as 905.9 acres in a single season but not prior to 1987.

5. Common agricultural practice by the applicant and other farmers in the area includes fall irrigation of land (after September 1) for preparation of planting of crops to be grown the following year.

6. At the hearing the Applicants proposed to irrigate only 527.2 acres for early season crop production. Once crops are harvested (prior to September 1) some portion of the 527.2 acres will not be irrigated for the remainder of the irrigation season. As a result of the non-irrigation of a portion of the 527.2 acres, the Applicants propose to fall irrigate an equivalent number of acres for preparation of lands intended to be irrigated in the following year under the 527.2 acre limit of the water right. The Applicants argue this proposal would not enlarge the water rights. The Applicants also argue that monitoring of their proposal by the watermaster is not burdensome to the watermaster.

7. The Applicant's proposal without strict regulation by the watermaster and the Department will likely result in enlargement of the water rights given the history of enlarged use.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 states, in pertinent part:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the

original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area.

2. The applicant bears the burden of proof for all of the factors listed in Idaho Code § 42-222. The preliminary orders issued December 2, 2009, were based on the applicant meeting these burdens of proof. Any amendment of the orders must be based on the same standard of proof.

ANALYSIS

Fall irrigation of acres in excess of the 527.2 acres previously irrigated.

The Applicants and the prior owner of the subject property have irrigated up to 905.9 acres in a single season after 1987. The SRBA review finds that 527.2 acres are the legal limit of use to be associated with these lands as recommended to the SRBA court. In light of past practice the unconditioned irrigation of more than 527.2 acres in the same irrigation season or calendar year represents a great potential for enlargement in use.

In certain situations involving PPU's, the set of water rights in the PPU have an acre limit that is less than the total acres of the authorized PPU. The Department's December 2, 2009 orders provided authorization for this type of PPU. PPU's of this nature have been created to allow flexibility for the water user to rotate use of water year to year within a PPU without having to file a transfer each year. PPU's have been authorized with conditions to ensure that the authorized number of acres is not exceeded within any irrigation season and the acres irrigated are within the bounds of the PPU. As a practice, the time period for consideration of use has been viewed as the irrigation season within a calendar year.

To the hearing officer's knowledge the fall season irrigation plan the Applicants propose has not been previously considered by the Department.

In analyzing the Applicants' proposal, the hearing officer views the proposal as a shift of the beginning and end of the annual time accounting for the number of acres irrigated.¹ For example, the start of the year's accounting of acres would be September 1 and end August 31 of the following year. As long as during this year long time frame only 527.2 acres are irrigated (crop growing and soil preparation of no more than 527.2 acres) this should be no different than irrigation of 527.2 acres during a calendar year or during an irrigation season and there would be no enlargement as long as the rates and annual volumes of the water rights are not exceeded during the normal irrigation season and the number of acres are not exceeded during the September 1 to August 31 acre accounting period.

To assure that the water rights will not be enlarged will require monitoring of use beyond current levels of monitoring provided by IDWR and the watermaster. Additionally, any approval should be such that if the conditions of approval are not explicitly met, then the approval may be rescinded or revoked.

ORDER

IT IS HEREBY ORDERED that applications for transfer No. 66132 and transfer No. 66133 **Approvals are Amended** subject to those conditions originally established in the orders dated December 2, 2009 and the additional conditions as listed below:

1. The use of water is subject to the attached "IRRIGATION PLAN".
 - 1.1 Prior to August 31, 2010 the applicant shall report directly to the Department and the watermaster of Water District 140 the location of the 527.2 acres initially irrigated from March 15, 2010 to August 31, 2010. The applicant shall also report that portion of the 527.2 acres intended to be dried up (defined as "A" acres under the plan) in exchange for irrigation of other lands between September 1 and November 15 of 2010 (defined as "B" acres under the plan) necessary to prepare soil for tilling, for application of chemicals, or for establishing fall planting.
 - 1.2 Beginning in 2011 and for each successive year, the applicant shall report directly to the Department and the watermaster of Water District 140 prior to May 1, the location of the 527.2 acres of crops that will be irrigated between March 15 and August 31. The applicant shall also report prior to August 31, the location and number of the "A" acres (that portion of the 527.2 acres to be dried up on or before August 31), and the number and location of the

¹ This analysis does not propose an actual shift or change to the normal irrigation season or a change to the annual volume of use limitation.

- “B” acres (the acres to be irrigated in the fall between September 1 and November 15).
- 1.3 Identification or reporting to the Department and the Water District 140 watermaster of the 527.2 cropped acres, the “A” acres, and the “B” acres shall be in the form of a land list and a map sufficiently detailed to allow creation of an electronic shape file.
 - 1.4 The total number of “B” acres shall not exceed the number of “A” acres in any irrigation season.
 - 1.5 Application of water to “B” acres in the fall is limited to water necessary to prepare soil for tilling, for application of chemicals, or for establishing fall planting. Application of water to “B” acres shall not provide water to irrigate crops for harvest in the same fall.
 - 1.6 The “B” acres identified for fall irrigation in any year shall be included in the 527.2 cropped acres for the subsequent season.
 - 1.7 The watermaster of Water District 140 shall monitor the place of use and regulate the use of water under the approved transfers pursuant to these conditions of approval. The watermaster of Water District 140 shall coordinate delivery and regulation with the watermaster of Water District 45-A of the surface water rights covered by transfer No. 66133.
 - 1.8 Original conditions of approval associated with transfer No. 66132 and transfer No. 66133 that are in the standard form of: *“This right is limited to the irrigation of ### acres within the place of use described above in a single irrigation season.”* shall be amended to the form of: *“This right is limited to the irrigation of ### acres within the place of use described above in accordance with the attached Irrigation Plan.”*
2. Failure to adhere to the conditions of use and timelines set forth on the “IRRIGATION PLAN” shall be cause for this amended approval to be revoked with prejudice and the transfers to revert back to the approval established in the orders dated December 2, 2009.

Dated this 20th day of July, 2010.



ALLEN D. MERRITT
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 20th of July, 2010 I mailed a true and correct copy, postage prepaid, of the foregoing Amended Preliminary Order Amending Transfer Approvals to the persons listed below:

E. EUGENE MATTHEWS &
HEIDI F. MATTHEWS
1249 S HWY 27
OAKLEY ID 83346

KENT FLETCHER
FLETCHER LAW OFFICE
PO BOX 248
BURLEY ID 83318

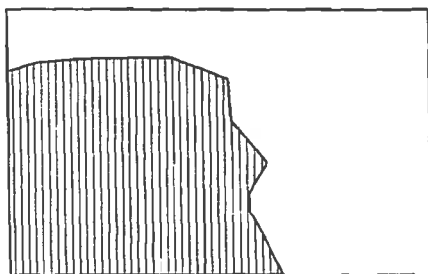
BRIAN HIGGS, WATERMASTER
WATER DISTRICT # 140
6330 W 33RD S
IDAHO FALLS ID 83402


Mary Baldwin

Administrative Assistant I

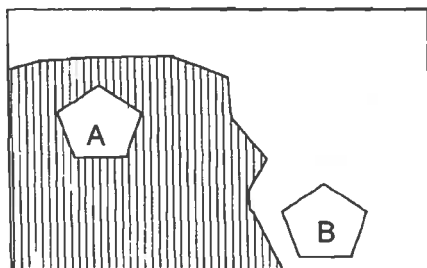
IRRIGATION PLAN

The following sketches visually illustrate the concept being approved. The rectangle represents the established permissible place of use of 905.9 acres. The vertically hatched area represents the allowed 527.2 cropped acres that may be irrigated within any one year.



Phase I

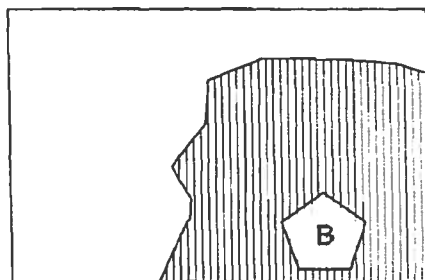
March 15 to August 31 of First Year
Irrigation of crops.



Phase II

September 1 to November 15 of First Year

"A" acres not irrigated for remainder of year.
"B" acres prepared¹ during fall for irrigation in Second year equal in size to "A" or smaller.



Phase III

March 15 to August 31 of Second Year
Irrigation of crops.

Phase II process would be repeated in the fall of the second year identifying potentially different "A" and "B" acres as long as the "B" acres are included in the irrigated acres the following year.

To start the process the applicant on or before August 31, 2010 must identify the 527.2 acres initially irrigated from March 15, 2010 to August 31, 2010 and the "A" and "B" acres. Beginning in 2011 and for each successive year, the applicant shall report prior to May 1, the location of the 527.2 acres of crops that will be irrigated between March 15 and August 31. On or before August 31, 2011 and similarly for each successive year the applicant must identify the "A" and "B" acres.

¹ Application of water to "B" acres in the fall is limited to water necessary to prepare soil for tilling, for application of chemicals, or for establishing fall planting. Application of water to "B" acres in the fall shall not provide water to irrigate crops for harvest in the same fall.

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, request for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The Department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.